



HONG KONG MONETARY AUTHORITY

香港金融管理局

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G16/1C

30 October 2018

The Chief Executive
All Authorized Institutions

Dear Sir / Madam,

Requirements Applicable to Online and Offline Distribution of Non-SFO-Regulated Structured Investment Products

I am writing to provide guidance on requirements applicable to offline distribution of structured investment products not regulated by the Securities and Futures Ordinance (non-SFO-regulated structured investment products).

The Securities and Futures Commission (SFC) issued the Guidelines on Online Distribution and Advisory Platforms on 28 March 2018. In this connection, the Hong Kong Monetary Authority (HKMA) consulted the banking industry in May 2018 on applying the same principles to online and offline distribution of non-SFO-regulated structured investment products on a risk-based basis. Taking into consideration feedback received from the industry, the HKMA provided guidance by issuing a circular entitled “Online Distribution and Advisory Platforms for Non-SFO-Regulated Structured Investment Products” (Circular on Online Platforms) on 24 August 2018.

Subsequently, the SFC issued the consultation conclusions on offline requirements applicable to complex products on 4 October 2018, with the relevant requirements becoming effective on 6 April 2019. The HKMA’s requirements for offline distribution of non-SFO-regulated structured investment products are highlighted below.

Offline distribution of non-SFO-regulated structured investment products

To avoid potential regulatory arbitrage, in respect of distributing or providing advice on non-SFO-regulated structured investment products in an offline environment, the HKMA expects Authorized Institutions (AIs) to follow the same applicable requirements as those applicable to the online platforms. In other words, Section II (Application of the Suitability Requirement) and Section IV (Exemptions for Institutional Professional Investors and Corporate Professional Investors) of the Annex to the Circular on Online Platforms are equally applicable to distribution and advice in an offline environment. Section III (Minimum Information and Warning Statements) of the Annex to the Circular on Online Platforms will be slightly adapted to cater for the offline environment.

A combined version covering guidance for both online and offline distribution of non-SFO-regulated structured investment products is set out in the **Annex**.

Implementation arrangement

To provide consistent customer experience in both online and offline channels, AIs are expected to implement the requirements applicable to the offline environment by the same implementation date as that applicable to online platforms (i.e. 23 August 2019). Individual AIs having strong justifications for an extended transition period should approach the HKMA for discussion.

If you have any questions on this circular, please contact Ms Anita Chan on 2878-1538 or Ms Florence To on 2878-1582.

Yours faithfully,

Alan Au
Executive Director (Banking Conduct)

c.c. SFC

(Attn: Ms Julia Leung, Deputy Chief Executive Officer and Executive Director (Intermediaries) and
Ms Christina Choi, Executive Director (Investment Products))

**Online and Offline Distribution and Advisory Activities for
Non-SFO-regulated Structured Investment Products**

Applicable to online distribution and advisory platforms

I. Core principles for operation of online platform and specific guidance on robo-advice

1. AIs should adopt the core principles (i.e. Chapter 2) and the specific guidance on robo-advice (i.e. Chapter 4) in the SFC's Guidelines on Online Distribution and Advisory Platforms (SFC's Guidelines) for online distribution and advisory platforms for non-SFO-regulated structured investment products to the extent where relevant and appropriate.

Applicable to online and offline distribution and advisory activities

II. Application of the Suitability Requirement for non-SFO-regulated structured investment products

2. Subject to streamlined arrangements set out in paragraphs 3 and 4 below, the HKMA expects AIs selling non-SFO-regulated structured investment products should adopt the Suitability Requirement set out in paragraph 5.2 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (SFC's Code of Conduct), the relevant guidance in Chapter 5 of the SFC's Guidelines and the relevant SFC's Frequently Asked Questions (FAQs)¹.

(i) **Standardised Non-SFO-regulated Structured Deposits**

3. Considering that some currency-linked deposits and interest rate-linked deposits have standardised features; are common to bank customers; and are not difficult for investors to understand, the requirements as set out in the SFC's Guidelines for derivative products traded on an exchange are considered as an appropriate reference point in respect of investor protection measures. Where there is no solicitation or recommendation, distribution of Standardised Non-SFO-regulated Structured Deposits (i) to customers having

¹ FAQs on Triggering of Suitability Obligations, FAQs on Compliance with Suitability Obligations by Licensed or Registered Persons and parts D and E of FAQs on the SFC's Guidelines.

sufficient investment experience in the product²; (ii) with 100% principal protection³; or (iii) in low concentration⁴ would not trigger the Suitability Requirement. AIs should follow the requirements in paragraph 5.1A and 5.3 of the SFC's Code of Conduct to ensure that the customer has knowledge of derivatives and sufficient net worth to be able to assume the risks and bear the potential losses⁵.

4. While product structures and features vary and keep evolving, an investment product can be considered as a Standardised Non-SFO-regulated Structured Deposit if it meets all of the following criteria:
 - (a) It is a deposit with an AI that falls within the meaning of “currency-linked instrument” / “interest rate-linked instrument” under Part 1 of Schedule 1 to the Securities and Futures Ordinance;
 - (b) It makes reference to a single major currency pair (HK dollar, US dollar, Euro, UK Pound Sterling, Australian dollar, New Zealand dollar, Canadian dollar, Swiss Franc, Japanese Yen, Renminbi (both CNY and CNH) and Singapore dollar) or interest rate only;
 - (c) It is not leveraged, i.e. investors will not lose more than the amount invested. Investing on margin should be regarded as leveraged; and
 - (d) It does not consist of a series of contracts or a series of settlements, where customers are obliged to purchase / sell / settle periodically within

² It refers to customers who have executed five or more transactions in the product of the subject transaction within the past three years. For the purpose of this investment experience assessment, currency-linked deposits with the same payout structure but linked to different single currency pair can be regarded as the same product. In other words, investment experience in principal-protected currency-linked deposits cannot be counted towards investment experience for non-principal-protected currency-linked deposits.

³ It means investors will receive at least 100% of the principal amount if the investors hold the investment until maturity and there is no issuer default.

⁴ “Low concentration” means investment in a specific product on a cumulative basis is within a reasonable threshold as determined by the AI. For the purpose of paragraphs 3 and 5 of this Annex, “low concentration” is assessed on a per currency pair basis or per interest rate basis (as the case may be). For guidance of concentration risk assessment, AIs can also refer to the relevant points of the SFC’s FAQs on Compliance with Suitability Obligations by Licensed or Registered Persons and FAQs on the SFC’s Guidelines.

⁵ For the purpose of paragraph 3 of this Annex,

- a customer having sufficient investment experience in the product, in general, will have met paragraph 5.1A of the SFC’s Code of Conduct;
- in respect of paragraph 5.3 of the SFC’s Code of Conduct, for a transaction with 100% principal protection or in low concentration; and does not involve leverage, in general, the customer can be regarded as having sufficient net worth to be able to assume the risks and bear the potential losses of trading in the products.

a specified period.

5. For distribution of Standardised Non-SFO-regulated Structured Deposits to customers without sufficient investment experience in the product; that are not 100% principal protected; and are not in low concentration, an AI should ensure that the transaction is suitable for the customer.
6. Following the existing requirements, solicitation, or provision of investment recommendation or advice on Standardised Non-SFO-regulated Structured Deposits will trigger the Suitability Requirement.

(ii) Other non-SFO-regulated structured investment products

7. Other non-SFO-regulated structured investment products (e.g. foreign exchange accumulators / decumulators issued by AIs; currency-linked notes issued by AIs; currency-linked deposits linked to non-major currency pair or linked to a basket of currencies; or hybrid currency and interest rate-linked deposits) are complex products, and AIs should ensure suitability irrespective of whether there is solicitation or recommendation.
8. A flowchart illustrating the application of Suitability Requirement on online and offline channels is contained in the Appendix for ease of reference. For the avoidance of doubts, AIs should also comply with other applicable regulatory requirements or guidance, for example, HKMA's circulars on accumulators / decumulators, Pre-investment Cooling-off Period, and Important Facts Statement (IFS), etc.

III. Sufficient information and warning statements for non-SFO-regulated structured investment product

9. In respect of a non-SFO-regulated structured investment product (excluding Standardised Non-SFO-regulated Structured Deposits), AIs should provide sufficient information about the key nature, features and risks of the product to enable customers to understand the product before making an investment decision. AIs should also ensure that prominent and clear warning statement(s) about the product are provided to customers prior to and reasonably proximate to the point of sale or advice. Reference can be made to a non-exhaustive list of examples of the minimum information and types of warning statements in the guidance "Minimum information to be provided and warning statements" issued by the SFC, where relevant.

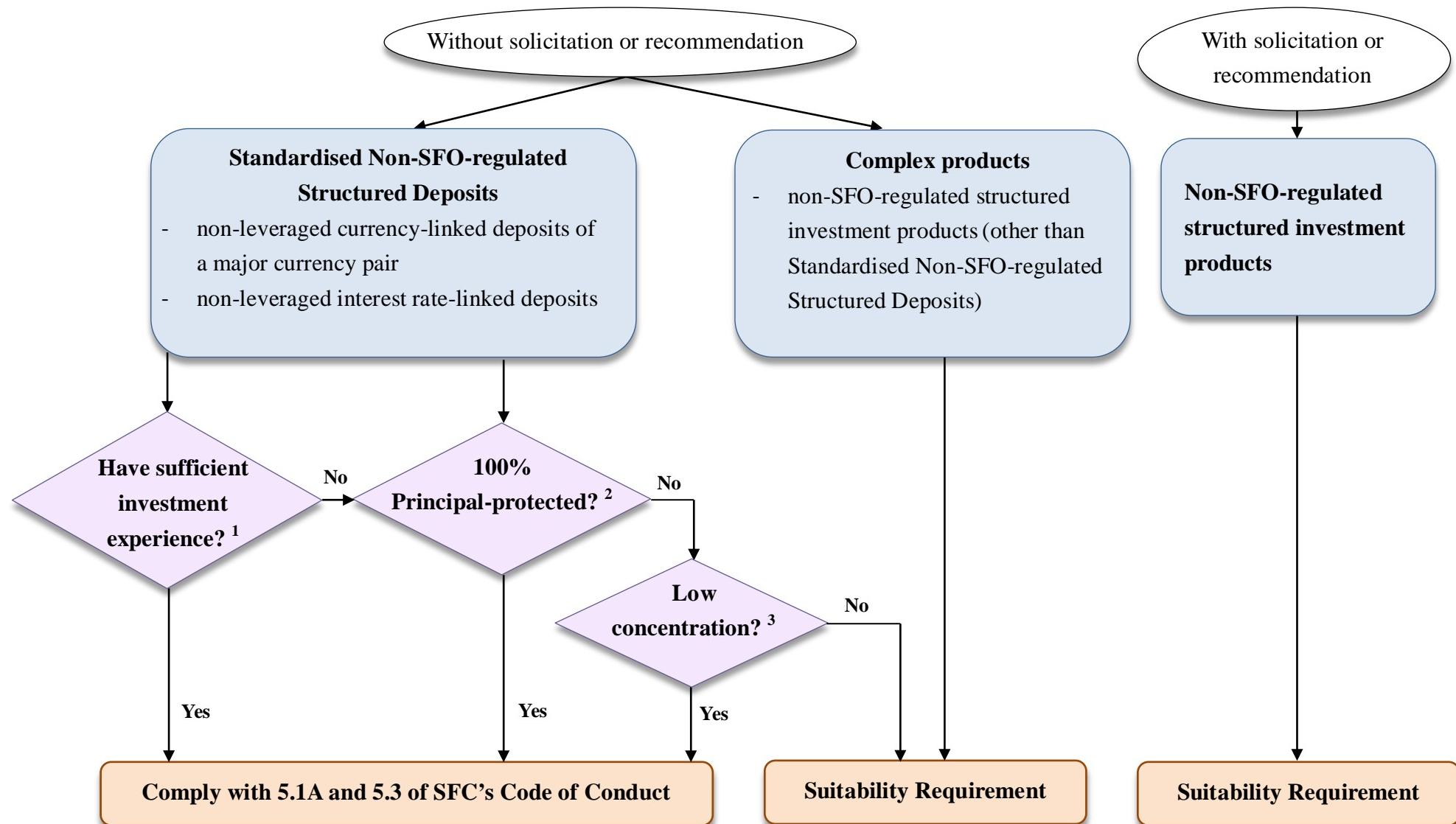
10. For online platforms, where the applicable minimum information and warning statements are contained in the IFS of a currency- / interest rate- linked product, posting of such IFS on the online platforms would generally satisfy this requirement. In offline environment, where the required information and warning statements are contained in the IFS of a currency- / interest rate-linked product, provision and explanation to the customer of such IFS would generally satisfy this requirement.

IV. Exemptions for Institutional Professional Investors and Corporate Professional Investors⁶

11. AIs dealing with Institutional Professional Investors and Corporate Professional Investors in respect of sale of non-SFO-regulated structured investment products could adopt the exemptions stipulated in paragraph 15 of the SFC's Code of Conduct and paragraphs 6.3, 6.7 and 6.8 of the SFC's Guidelines, including the suitability requirement, minimum information and warning statements. Notwithstanding these exemptions, the HKMA expects AIs continue to comply with the general principle of making adequate disclosure of relevant material information in their dealing with customers.

⁶ “Institutional Professional Investors” refer to that defined in the SFC’s Code of Conduct. For the purpose of this circular, “Corporate Professional Investors” refer to those professional investors where AIs have complied with paragraphs 15.3A and 15.3B of the SFC’s Code of Conduct.

Online and Offline Distribution and Advisory Activities for Non-SFO-regulated Structured Investment Products



¹ It refers to customers who have executed five or more transactions in the product of the subject transaction within the past three years.

² It means investors will receive at least 100% of the principal amount if the investors hold the investment until maturity and there is no issuer default.

³ Meaning investment in a specific product on a cumulative basis is within a reasonable threshold as determined by the AI.